SOUTH CAROLINA GENERAL ASSEMBLY
Legislative Audit Council

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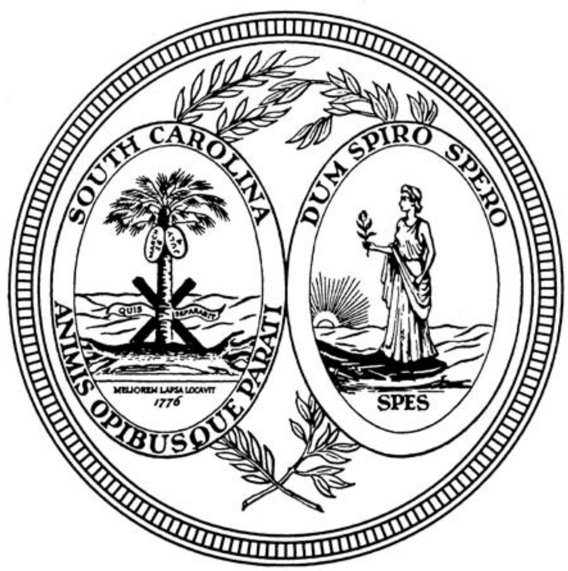
July 2011

A REVIEW OF THE PROFESSIONAL AND OCCUPATIONAL LICENSING DIVISION AT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION



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Introduction and Background

Audit Objectives

Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the Department of Labor, Licensing and Regulation (LLR). The requesters were concerned about the operations of the professional and occupational licensing (POL) division and the financial status of the boards within the division. Our audit objectives were to determine how LLR:

- Procures and monitors contracts and evaluate the effectiveness of that process.
- Manages the finances of the professional and occupational licensing boards and if they have been managed appropriately.
- Issues licenses and if that process operates efficiently and in compliance with the law.
- Conducts investigations and evaluate the effectiveness of that process.

Scope and Methodology

We reviewed the operations of LLR's POL division focusing on the financial, licensing, investigative, and procurement activities. The period of our review was generally FY 08-09 and FY 09-10, with consideration of earlier and more recent periods when relevant.

To conduct the audit, we used evidence which included the following:

- Data from LLR's finance, human resources, investigation, and licensing operations.
- State laws and regulations.
- LLR policies and procedures.
- Interviews with LLR staff and members of professional and occupational licensing boards.
- Information from the Budget and Control Board's Materials Management Office.

Criteria used to measure performance included state laws and regulations, agency policy, and agency contracts. We used several nonstatistical samples, the results of which cannot be applied to the whole population. These samples are described in the audit report. We reviewed internal controls in the monitoring of contracts and the finances of the professional and occupational boards. The use of computerized data was not central to our audit objectives. We tested the reliability of LLR's computerized data on financial transactions and did not identify concerns about its accuracy.

We conducted this performance audit in accordance with generally accepted government auditing standards with the exception of the general standard concerning quality control. Due to LAC's budget reductions, funding was not available for a timely external quality control review. In our opinion, this omission had no effect on the results of the audit.

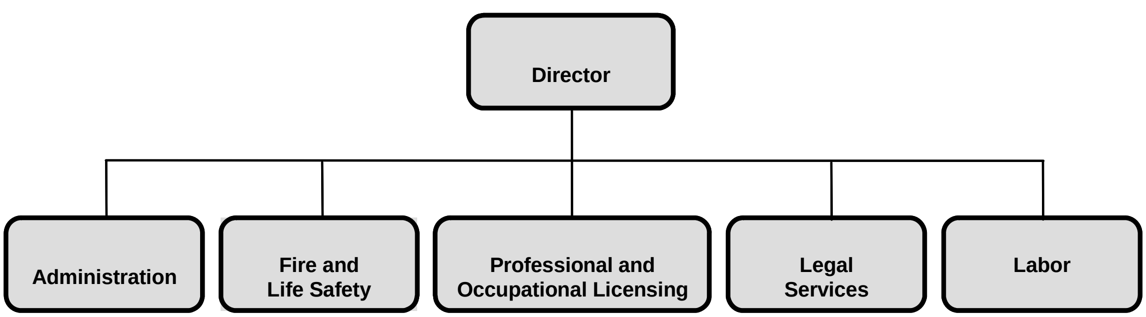
Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Department of Labor, Licensing and Regulation (LLR) was established in 1994 as part of state government restructuring and is an agency in the Governor's cabinet. It includes a Division of Labor, the SC Fire Academy, the Office of the State Fire Marshal, and the professional and occupational licensing boards.

As of October 1, 2010, the department had 386 full-time employees and 360 temporary employees, 270 (75%) of whom were instructors at the Fire Academy. LLR had revenues and expenditures over $36 million for FY 09-10. Table 1.2 shows the department's revenues and expenditures for FY 08-09 and FY 09-10.

Chart 1.1: LLR Organization Chart



Source: LLR.

Table: 1.2: LLR Revenues and Expenditures: FY 08-09 - FY 09-10

Source of Funds	FY 08-09		FY 09-10	
	Revenues	Expenditures	Revenues	Expenditures
Earmarked	$29,314,397	$33,057,628	$20,779,625	$31,801,958
Federal	2,429,890	3,207,301	2,843,017	2,247,873
General Fund	4,614,867	2,750,829	12,798,648	2,212,440
Total	**$36,359,154**	**$39,015,758**	**$36,421,290**	**$36,262,271**

Source: LLR

Within the department, a professional and occupational licensing division was created which includes 40 separate professional and occupational licensing boards. The purpose of this division, according to state law, is "to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners." Each board within the department is a separate board. The boards currently administered by LLR are listed in Appendix A.

Within the POL division, there are three offices which handle different responsibilities of the boards:

- Office of Licensure and Compliance – handles initial, renewal, and special licensures.
- Office of Board Services – oversees the needs of the boards.
- Office of Investigations and Enforcement – investigates complaints involving misconduct by licensees.

The department is responsible for the administrative functions of the boards, while the boards' responsibilities include setting the criteria for licensure and disciplining licensees.

For FY 09-10, the division had more than 330,000 licensees from 40 boards. As of October 1, 2010, there were 172 full-time employees and 39 temporary employees in the POL division. The division had total revenues for FY 09-10 of over $11 million and expenditures of over $22 million. The financial information and staffing of the division and the boards will be discussed in chapter 2 (see p. 13).

Audit Results

Contract Management

We reviewed how LLR procures and monitors contracts to evaluate the effectiveness of the process. We found that LLR:

- Allowed unauthorized persons to amend contract payments and timelines.
- Failed to require vendors to comply with the terms of the contract.
- Requested reimbursement of all monies from one vendor or acquisition of all services stated in the contract.
- Should increase its use of one of the systems purchased.
- Should follow the recommendations of financial analysts when selecting, monitoring, and paying vendors.

For the review, we selected two contracts related to updating information technology systems. One contract is for the purchase of a system that allows access to board meetings through the Internet and the other is for the purchase of a system to replace the current licensing management system.

Professional Occupational Licensure System Contract

In March 2009, LLR signed a contract with a vendor to acquire an occupational licensure system to provide greater and easier access to licensing services and increase efficiency of the licensing process. The contract is for a five-year period ending in March 2014, with LLR to pay over $3.1 million. System implementation was to be completed in September 2010. However, LLR stopped payment in October 2010, when an official at the Budget and Control Board (B&CB) informed LLR that the vendor was in breach of contract due to the lack of deliverables received from the vendor. In February 2011, the B&CB sent the vendor a “right to cure” letter asking it to provide the services expressed in the contract or fully refund all monies paid within 30 days.

As stated in the contract, the goals of the system include:

- Maintain and enhance the current level of functionality on back office system.
- Migrate extensive existing data elements.
- Add specific functionality and expand services to the public via Internet access.
- Increase efficiency of investigators, inspectors, and other field staff through web interface.

The contract requires the system to address the administration of a large amount of complicated programs related to professional licensing and discipline, in addition to fire services and elevator and amusement rides. At the time of contract signing, LLR used a seven-year old, customized version of a back office database application. The new system was to assist in migration of data and functionality from that system and provide ongoing support and maintenance.

Finances

The contract period is for five years, from March 2009 – 2014, and includes fees for general services, travel expenses, license fees, and maintenance. LLR agreed to pay the license fee upon signing. The remaining software and general services fee is spread out over the 18-month implementation period (March 2009 through September 2010).

Table 2.1: Fees Included in Initial Contract

FEES	AMOUNT
General Services	$1,370,000
License Fees	900,000
Maintenance	753,000
Travel Expenses	100,000
TOTAL	**$3,127,000**

Source: LLR.

By December 2010, LLR paid the vendor approximately $2,175,325, or almost 70% of the agreed total amount, and only received a system that did not function properly for one board. About $1,028,000 of the payments were for general services, $899,950 for licensing fees, $120,000 for maintenance, and $90,000 for travel expenses. In addition to the contract fees, LLR purchased other software from both the vendor and another company in order to work with the new system. LLR paid $38,830 for a document imaging system to another vendor and $38,936 to the vendor for additional software. After agreeing to pay $57,350 in additional general service fees, LLR added about $130,000 to the final cost of the contract.

Financial Analysis of Vendors

The B&CB obtained a financial analysis for each vendor that submitted solicitations in response to the request for proposal. According to the analysis, at the time of signing, the winning vendor was financially stressed and would probably need more cash to continue other projects to which it was already committed. Also, it had very little borrowing power, as it owed more than its total assets. The analysis recommended the B&CB and LLR:

- Include a well-written and administered progress payment clause in the contract.
- Monitor the vendor “like a hawk” to ensure payments are a result of work on the project.
- Support payments and work by time reports of people known to be working on the project.
- Expect and decline any vendor requests for payments in advance.

Despite these recommendations, LLR failed to hold the vendor accountable for deliverables and paid approximately $415,000 more for project work not specified in the original contract. In addition, LLR agreed to pay the vendor almost $100,000 in extra software and service fees not included in the signed contract.

Adjustments

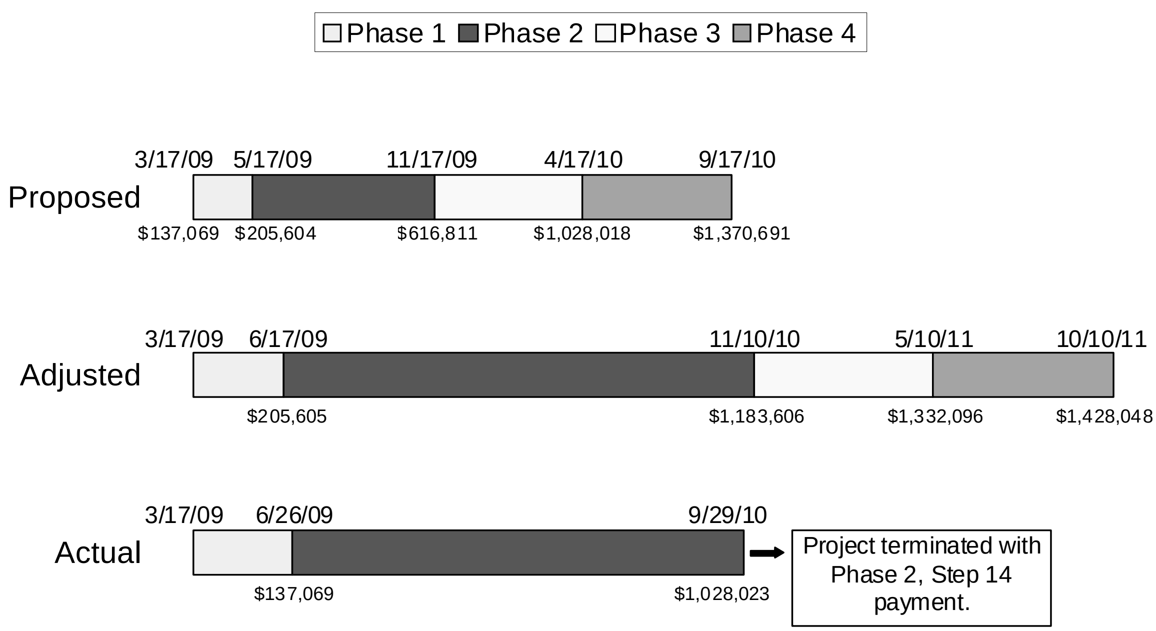
LLR management allowed unauthorized LLR officials to sign five change orders during the course of the implementation of the system. These change orders altered the payment schedule, increased the total amount of costs for services rendered, and extended the timeline of implementation of the system by a year. According to the contract, “Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.” In this case, the information technology management official at the Budget and Control Board is the only official authorized to make such changes.

As stated previously, the project plan stipulated completion of the project by the end of September 2010. Six months into the project implementation, in September 2009, LLR agreed to extend the deadline two months to November 2010. In July 2010, LLR signed a change order extending the project to October 2011, over a year after the original agreed-upon completion date. According to agency officials, the initial project schedule was too ambitious given LLR’s resources. In addition, LLR did not have a document management system and the imaging and conversion of records proved to be more difficult than predicted. Finally, according to an agency official, a lesser factor that influenced the timeline was LLR’s conversion to the South Carolina Enterprise Information System (SCEIS) in November 2009.

The project implementation schedule stipulated four phases. Phase one included LLR’s Office of Elevators and Amusement Rides system and was to be completed by May 31, 2009. Phase two included the POL boards and was to be completed by November 2, 2009. Phases three and four included the fire marshal and fire academy and was to be completed by April and October 2010. The chart below details the proposed timeline, including the total amount of payment for general services after completion of each implementation phase. It also includes the changed and actual timelines with the corresponding payments for each phase.

In addition to extending the timeline, LLR agreed to pay the vendor an extra $57,357 for increased time required for data conversion. In September 2010, the vendor and LLR signed a change order splitting the costs of additional work hours for data conversion. However, LLR stopped payment to the vendor prior to paying for these charges.

Graph 2.2: Project Implementation Timelines and General Services Payment Schedule



Source: LLR

Deliverables

LLR paid more than agreed to in the contract and for fewer services rendered. By December 2010, the agency paid just over $90,000 of the $100,000 in travel expenses allotted for the contract and about $1,028,023 of the $1.37 million in general services. According to the proposed payment schedule and timeline, LLR agreed to pay roughly 44% of the general services fee to acquire work through phase two of project implementation, which was just over $616,000. LLR documentation of invoices from the vendor verifies LLR paid about 90% of the agreed-upon travel expenses and 75% of the general services expenses, or $1,028,023, prior to completion of phase two. In addition, according to B&CB and LLR agency officials, the partially-installed system was not fully functional. Despite this fact, LLR paid the first scheduled maintenance fee of almost $120,000 in July 2010.

Right to Cure Letter

B&CB and LLR officials met in September 2010 and discussed the progress of the implementation of the licensing system. The B&CB official requested that LLR provide an explanation for a variety of issues related to the contract, including: the timeline and payment schedule, completion of the contract, current progress of the vendor, increases in the number of steps required for project implementation, and the deliverables associated with the increased steps. LLR listed a number of contributing factors affecting the timeline, including lack of agency resources, conversion to SCEIS in November 2009, and an overly ambitious initial project schedule.

In October 2010, LLR stopped payments to the vendor after the B&CB considered the vendor to be in breach of contract. LLR provided the vendor additional time to get the system up and fully functional, according to contract requirements. However, in February 2011, the B&CB issued a right to cure letter to the vendor officially requesting delivery of services or reimbursement. The total amount that the B&CB requested for refund, $2,056,877, includes costs for software licenses, services rendered, travel costs, and additional software.

As stated previously, LLR spent $119,993 in maintenance charges in July 2010. The B&CB did not include this charge in the amount requested in the right to cure letter. In April 2011, a B&CB official informed LLR the amount cited in the cure letter did not include the maintenance fee. According to an LLR official, LLR added the fee to the total amount during mediation and it is the intent of the agency to obtain all funds, including attorney fees.

Recommendations

1. The Department of Labor, Licensing and Regulation should ensure that only authorized officials sign all change orders for contracts.

2. The Department of Labor, Licensing and Regulation and the Budget and Control Board should continue to pursue acquisition of services or reimbursement from the vendor.

3. The Department of Labor, Licensing and Regulation should ensure that payment to vendors corresponds with the agreed-upon payment schedule for deliverables provided.

4. The Department of Labor, Licensing and Regulation and the Budget and Control Board should ensure that they include the maintenance fee of almost $120,000 in the total amount requested for reimbursement.

5. The Department of Labor, Licensing and Regulation and the Budget and Control Board should follow the recommendations of financial analysts when selecting, monitoring, and paying vendors.

Board Meeting Management System Contract

In April 2008, LLR contracted with a vendor for $200,000, to purchase a meeting management system that allows LLR to manage board meetings. Specifically, the contract requires the vendor to provide a system that:

- Automatically records board member votes, roll calls, motions, and notes directly into the meeting minutes.
- Broadcasts a live webcast of all board meetings that are then archived.
- Links agendas and minutes to the audio/video of meetings in the archive.

The system recorded its first board meeting in November 2008.

LLR requested this service to improve external and internal access to board meetings. In addition, the agency wanted to reduce travel costs and provide more flexibility on time and location of meetings. Finally, according to an agency official, the system allows for persons making short presentations to boards the ability to tie into the system instead of traveling to the central office. The system can also be connected to the video conferencing system used by the technical school system.

Finances

In the request for proposals, LLR stipulated a contract period from April 2008 through April 2013. The cost of the contract is about $203,000, with the first-year period costing $101,000 which includes the development and installation of the software and equipment and costing a total of $102,000 for maintenance over the last four years. As of December 2010, LLR paid the vendor almost $130,000. The projected total cost through the end of the contract period is almost $190,000.

Monitoring Vendor Compliance

LLR requested the implementation of the web-streaming system as soon as possible. The request included the requirement of a timeline detailing all phases of implementation of the system. In addition, it includes technical hardware and software specifications which include:

- Providing a live webcast of board meetings.
- Automatically recording board member votes and motions.
- Archiving all board meetings in a searchable database online.

Finally, the contract required the vendor to provide training to LLR employees, maintenance of the system, and 24/7 technical and user support.

The vendor did not meet timeline specifications when implementing the system. There were no penalties in the contract for not meeting the timelines. The vendor included a specific timeline of implementation of no more than 60 days. According to the technical proposal submitted by the vendor, training of LLR employees should occur a maximum of 45 days after implementation of the system. The contract period began in April 2008, and the proposal stipulated the vendor provide training in June. Training for the system occurred in October of 2008, four months after the agreed-upon deadline.

The web-streaming software provided by the vendor appears to meet the technical software and hardware specifications stipulated by the request for proposal. The system allows LLR to create and manage board meeting archives and link documents in a searchable online database. According to an LLR official, the vendor provides the required monthly maintenance and 24/7 user support required by the contract. LLR employees contacted the vendor successfully numerous times over the last few months in order to obtain technical support. Also, the vendor provided on-site training to LLR employees.

Use of the System

LLR is not utilizing the full capability of the system provided by the vendor. As stated previously, the system allows LLR to maintain an online, archived database of board meetings that includes links to agendas, meeting minutes, and audio and video of meetings. LLR has recorded and archived 94 (21%) of the 450 board meetings from November 2008 through February 2011, with only 13 (3%) including all required information. Of those recorded and archived, only 14% had the agenda included.

According to an LLR official, one of the major reasons the system is not utilized at every board meeting is due to lack of space. There are only two rooms at the central LLR office equipped with the system. Since space is limited, not all board meetings can be recorded. However, LLR's website confirms only one board meeting on certain days, indicating one of the rooms should have been available for use. Additionally, LLR can schedule meetings to ensure that more of the meetings can be recorded.

In order to include the additional material such as agendas, LLR staff have to send the information to the information technology (IT) staff to be included on the website. LLR employees trained to use the system do not interact with IT staff to ensure agendas are included on the archived website. According to an agency official, computer and technical capabilities of employees prevented them from uploading agendas. However, IT staff was not consulted to address the issue.

Recommendations

6. The Department of Labor, Licensing and Regulation should include penalties for noncompliance by vendors in the terms of contracts.

7. The Department of Labor, Licensing and Regulation should include agendas for all recorded and archived board meetings on its website.

8. The Department of Labor, Licensing and Regulation should increase the number of board meetings recorded using the meeting management system.

Finances

We reviewed the Professional and Occupational Licensing (POL) division of the Department of Labor, Licensing and Regulation (LLR) to assess the financial management of its revenue generated mainly from issuing licenses. We found that the boards do not approve all expenditures from their boards' revenues. The boards should also review their fee structures to determine if their fees should be revised because many boards have large cash balances. Due to the change in the organizational structure of the POL divisions, LLR should ensure that the revised allocations of expenses among the boards for administration are implemented accurately.

Overview

The POL division is divided into three groups: the Office of Board Services, where the administration of each board shares support staff, the Office of Licensure and Compliance, which processes initial and renewal licenses and assures compliance with the guidelines, and the Office of Investigations and Enforcement, which conducts investigations and inspections of licensees of all the boards. Additional services are provided to the boards by other divisions of LLR, such as finance and human resources.

The boards are funded by issuing licenses and collecting fees and fines. Board revenues are not combined, as collections are allocated to each board. As LLR state appropriations decreased over the past eight years, LLR has assessed boards a larger portion of the cost of administration. These are considered overhead charges. Transfers of overhead charges are allocated to boards based on either a formula or a tier system approved by the agency head and assistant deputy directors in the POL division (see p. 17). The boards pay the direct expenses of its staff and board members, as well as the expenses of five non-revenue-generating divisions of LLR.

Total revenue, expenditures, and transfers for the boards for FY 09-10 are shown in Table 2.3.

Table 2.3: Revenues, Expenditures, and Transfers for POL Boards FY 09-10

	AMOUNT
Beginning Cash	$ 32,029,935
Revenue Collected	11,769,246
Total Cash Available	43,799,181
Total Expenditures	(9,454,282)
Total Transfers to General Fund and LLR Overhead	(13,337,658)
BALANCE	**$ 21,007,241**

Source: LLR

110% Proviso

Proviso 65.3 in the FY 09-10 appropriations act required professional and occupational licensing boards to remit to the general fund annually an amount equal to 10% of each board's expenditures. It also states that the Contractors' Licensing Board must remit all revenues above its expenditures. We found that the boards remitted ten percent in FY 09-10 to the general fund, and the Contractors' Licensing Board and Real Estate Commission contributed significantly more than 10% of their expenditures. In FY 09-10, the boards remitted $1,333,160 to the general fund.

Revenues

The majority of revenue generated by the boards comes from issuing initial licenses and renewal licenses. Permit fees, examination fees, application fees, apprentice licenses, and violation fines are among other sources of revenue. We verified that the revenue information reported for each board to the General Assembly was in compliance with the detailed financial statements for each board. We also verified that the divisions have procedures to process revenues received by the department.

The June 30, 2009, State Auditor's Report for the Department of Labor, Licensing and Regulation repeated previous recommendations that the department review and strengthen its procedures to ensure that receipts are deposited timely, and that department personnel issue a cash receipt for all cash received by the agency. The finance division provided procedures that revenue is balanced and deposits are prepared within five days of receipt of all forms of payment. Our audit did not test these procedures.

LLR receives state funding of approximately 3.2% of its $41 million total agency budget. The state funding is used to match federal grants received for Occupational Safety and Health Administration programs, but LLR does not receive state appropriations for administration. Revenue for boards whose revenue exceeds their expenses is carried forward year to year, and not reallocated.

Budgets

According to an LLR official, the boards do not have budgets. According to this official, monthly financial reports are sent to the board administrators as information (see below). They decide how to spend their revenue, based on how much cash they have on hand for current and future needs.

Board Approval

We interviewed seven board administrators to assess the budgeting process of their boards. Their responses were consistent in describing the type of financial information that is provided for their boards. They all said that the SCEIS (South Carolina Enterprise Information System) reports are very hard to interpret, unlike the reports supplied by the former system.

None of the seven board administrators received monthly user-friendly financial information since the agency converted to the SCEIS system. If they need financial information, the director of finance provides it. None of the boards are involved in preparing their budgets. For example, one board administrator shared that the board had $115,000 per month taken out for temporary staff that did not work for the board, even though those expenditures had not been approved by the board.

Similar responses were given when other board administrators were asked about the board members' involvement in the budgeting process and what information is shared with them. One responded that the boards do not have a budget, and financial reports are only for information. Another pointed out that the reports went to the Assistant Deputy Director for POL boards, and added that "SCEIS is a nightmare." Still another stated that it does not matter as the board has no authority.

Expenditures

The majority of expenditures for the boards consists of salaries and benefits. The remaining expenses range from temporary positions to rental, legal, travel, and others that relate to each specific board. Expenditures are summarized in Table 2.4.

Table 2.4: POL Board Expenditures for FY 09-10

DESCRIPTION	AMOUNT
Classified Positions and Fringe Benefits	$5,756,314
Temporary Positions	195,702
Per Diem	57,855
Overtime	42,064
Other Professional Services	78,451
Contractual Agreements	592,184
Temporary Services	93,118
Cellular Service	27,313
Fees and Fines	187,371
Other Administrative and Rent	1,676,812
Leased Cars	157,988
Travel	493,018
Other*	96,092
TOTAL EXPENDITURES	**$9,454,282**

*Includes catered meals, gasoline, registration fees, leave payouts, etc.

Source: LLR

A POL official informed the LAC that when budget cuts occur, such as in 2010, boards with large cash balances took the bulk of the cuts. The General Assembly did not direct LLR on how to absorb the cuts, so cuts were made where money was available. The agency director approved where the cuts would be made and notified the assistant deputy directors. Finance administration decided on the allocation of cuts, based on which boards had the most cash on hand (see p. 18).

The official continued that board administrators or their designees approve all payments for their board’s expenses such as travel, printing, or salaries. There is a process for the procurement of goods and services that requires not only their approval, but budget approval, procurement approval and agency head approval if the amount warrants. The boards operate on a cash budget and collect revenue for the future year’s expenditures.

Voucher Review

We reviewed a nonstatistical sample of 50 vouchers to verify accuracy and appropriateness. We found that generally the expenditures were documented properly. Only one of the fifty invoices was approved to be paid by a board administrator.

We consulted with six board administrators regarding charges that were paid by their boards for use of state cars, cell phones, and temporary positions. Five responded that they had no knowledge of charges to their boards' revenues and they do not approve those payments each month. Another board administrator explained that once a board administrator approves an expense, such as a cell phone, the procurement administrator approves the monthly invoices. To ensure that expenditures are appropriate, board administrators should approve all charges paid from their boards' revenue.

Recommendation

9. The Department of Labor, Licensing and Regulation should implement procedures to ensure that board administrators approve all expenditures paid from their boards' revenues.

Transfers

According to an LLR official, the boards pay their direct costs, such as salaries, benefits, travel, and other items. Each board pays costs of LLR's five non-revenue-generating divisions: LLR Administration, POL Administration, Office of Licensure and Compliance (OLC), Office of Investigations and Enforcement (OIE), and Legal. Those overhead expenses are allocated to each board by formulas approved by the agency director and assistant deputy directors. Each board must also remit annually an amount equal to ten percent of its expenditures to the General Fund as required by proviso.

Funds are transferred monthly from the POL boards to pay for LLR divisions that do not generate revenue and are considered to be overhead. Funds were charged out according to methods that were approved prior to 2011 by the agency director and POL's assistant deputy directors. Based on the new agency structure for the professional and occupational licensing division (see p. 26), LLR management has reviewed and adjusted the method of allocating payment of expenditures for non-revenue-generating divisions. The revised method will be effective in FY 11-12.

Each transfer calculation was tested, and only slight variances were noted. Table 2.5 shows transfers in FY 09-10 for each non-revenue-generating division.

Table 2.5: FY 09-10 Board Transfers for Non-Revenue-Generating Divisions

DIVISION	AMOUNT
LLR Administration	$ 3,641,264
POL Administration	274,770
Office of Licensure and Compliance	2,982,358
Office of Investigations and Enforcement	3,665,223
Legal	1,429,787
Remittance to General Fund	1,344,256
TOTAL	**$ 13,337,658**

Source: LLR

Transfers to Make Up Budget Cuts

According to an LLR official, the agency transferred funds from the POL boards to other areas, such as immigration and OSHA (Occupational Safety and Health Administration). In FY 10-11, provisos 65.7 and 65.8 required these transfers.

In addition, the General Assembly required the transfer of funds from the POL revenues in FY 09-10 totaling $9,869,315 through provisos:

Table 2.6: Provisos for Transfers

PROVISO	AMOUNT
65.3	$5,300,000
65.14	4,362,265
89.115	207,050
TOTAL	**$9,869,315**

Source: FY 09-10 Appropriations Act

The funds were originally taken from the Massage/Bodywork Therapy Board, the Board of Registration for Professional Engineers and Surveyors, the Real Estate Commission, the Board of Pharmacy, and the Residential Builders Commission. LLR selected those boards based on three factors:

(1) Large cash balance carry-forward.
(2) Licenses renewing in 2010.
(3) Sufficient revenue to meet expenses.

The General Assembly did not specify from which boards to transfer the funds. POL management did not think it was fair to take the funds from smaller boards since their fees barely covered their expenditures. The cuts, except for proviso 89.115, were non-recurring.

In addition, proviso 65.3 requires each board to remit an amount equal to ten percent of its expenditures annually to the general fund. Recalculations of POL transfers for FY 09-10 were in compliance with that proviso.

Expenditures exceeded revenue for eleven boards during FY 08-09; however, all but one had deferred revenue that was sufficient to cover the one-time deficit and ensure self-sufficiency. For the other board, changes were made in FY 09-10 to staffing and board expenditures that will eliminate the negative carry-forward.

In FY 09-10, seven boards retained an end-of-year balance in excess of $1 million and five boards ended with a collective negative balance of $1,245,738. The collective end-of-year balance in FY 09-10 was more than $20 million. An LLR official reported that during 2011, an additional fee for the Recovering Professionals Program was eliminated for five boards and fees for verifying a license were reduced. Reductions were reported for license and renewal fees for three boards. Based on the end-of-year balances for the majority of the boards, each POL board should review its fee structure, as required by S.C. Code §40-1-50(D)**.**

Recommendations

10. The Department of Labor, Licensing and Regulation should ensure that the revised board expenditure allocations for non-revenue-generating divisions are implemented accurately.

11. The professional and occupational licensing boards of the Department of Labor, Licensing and Regulation should review their license and renewal fee structures to determine if fees should be adjusted, in accordance with S.C. Code §40-1-50(D).

Licensing

We reviewed the operations of the Office of Licensure and Compliance (OLC) to evaluate the process of issuing licenses. The OLC processes initial licenses, renewal licenses, non-routine licenses, and enforces quality assurance for the professional and occupational licensing (POL) boards at the Department of Labor, Licensing and Regulation. We found that the creation of the OLC was not communicated adequately to staff or board members. We also found that the boards have not consistently audited licensees' continuing education to ensure compliance with state law and that calls from the public have not been answered.

Office of Licensure and Compliance (OLC)

The Office of Licensure and Compliance processes licenses and assures compliance for all of the POL boards; therefore, it is not a revenue-generating division. To pay its expenses, revenue is transferred from 16 of the larger POL boards. The amount paid by each of the contributing boards is based on methods approved by the agency director and the three POL administrative deputy directors. During FY 09-10, $2,982,358 were transferred for OLC expenditures.

Licensing Procedure Before OLC

An OLC official described the licensing procedure before the creation of OLC in 2008. The boards issued their own licenses, and had to hire temporary employees during renewals to help process all of the licenses.

According to the May 8, 2008, organization chart, the professional and occupational licensing division consisted of 140 employees. The most recent organization chart indicated approximately 153 staff positions for POL and an additional 11 contractual employees. That yielded a net increase of 24 POL staff.

Creation of OLC

The Office of Licensure and Compliance was created in November 2008. Thirty-nine of the former POL staff transferred to OLC and twenty-one full-time positions, five state temporary employees, and seven contractual temporary employees were added. At the time of our review, the total OLC work force was 72.

According to an OLC official, prior to restructuring, the boards had processes in place which were not supported by statute or regulation. The director believed that pooling work experiences and sharing equities would even out the work flow. The development team consisted of the agency director and the three professional and occupational licensing division's assistant deputy directors, who represented the Office of Investigations and Enforcement (OIE), the Office of Board Services (OBS), and the newly-created Office of Licensure and Compliance (OLC). A POL official recalled that the OLC was created in phases to improve efficiencies.

LLR had a study of the POL division conducted by the Office of Human Resources in FY 07-08. The year-long study by four OHR and ten LLR staff was to identify simplified work processes of initial licensure and license renewal. There were 16 recommendations on the following subjects:

- Organizational Structure and Work Design
- Performance Metrics
- Management of Telephone Inquiries
- Imaging of Application Documents
- Training and Job Aids
- Opportunities for Process Improvement

Three recommendations were to create a call center to screen and answer routine telephone inquiries, expand the use of imaged documents, and centralize the mail and fee handling functions. All of these were implemented in OLC, but the OHR report did not recommend reorganizing the department or replacing the RELAES (Regulatory Licensing and Enforcement System) data system.

Discussions began in April 2008 on how to consolidate the licensing function, but OLC was not physically in place until November 2008.

According to OLC's management, LLR's human resources division was heavily involved in staffing OLC, but no board members were included, and staff were not consulted as to preferences of transfer. It was explained that all OLC staff roles were expanded from their former positions, and that the board administrators recommended the staff to be transferred. It was estimated that 95% of the OLC licensing division were performing in comparable programs before they were transferred. New positions were created, but the staff were not required to apply for the new positions, as they were selected and assigned from within. Only supervisory positions were posted.

The team met with the staff before their transfers to alert them of the changes. OLC worked with LLR human resources to reclass and upgrade positions that did not accurately reflect their job duties. It took a series of meetings to outline the changes, and cross training took a year.

Implementing the Change

OLC management stated that briefings from the agency director and human resources were made in small group meetings to present the rationale of pros and cons of the new division, and opportunities for career development. The OLC official said that there were meetings and training sessions with the OLC division regarding the changes. OLC management was not able to provide documentation to support announcements of the new division, planning meetings, or implementation of the Office of Licensure and Compliance.

We requested copies of e-mails, memos, and minutes that were distributed during the development of the new division. In reviewing the documents provided, we found that none were addressed to all 15 board administrators, and there was no consistency as to which board administrators were selected to receive the documents. A PowerPoint presentation, dated June 13, 2008, was prepared by the director and OLC program manager, “to inform the group of the organizational structure and provide staffing update.” No list was provided indicating to whom the material was distributed.

Staff Perspective

We asked staff at LLR about the creation of the OLC to determine their involvement in the process. We interviewed assistant deputy directors (ADD), POL administration, and board administrators. Each of the POL management staff and the seven board administrators that were interviewed, with one exception, expressed displeasure in the fashion that OLC was implemented and presented to the agency. The interviewees also shared frustration with the poor quality of service that the licensing applicants received. Members from licensing boards also reported uncooperative, inaccurate, and inefficient procedures that had been enacted by the Office of Licensure and Compliance.

An ADD could recall no meetings or notes during OLC’s creation, only decisions by the agency director, the future special projects manager, and the OLC manager. The ADD confirmed there were no postings or interviews for staffing OLC, except for supervisory roles.

We interviewed seven of the fifteen board administrators (BA) separately, who represented 16 of the 38 professional and occupational licensing boards. Each BA reported that his or her former staff had no input into the transition of the OLC reorganization. They and their staff were notified by e-mails of dates to be reassigned. Skilled staff were transferred, but not necessarily given comparable duties. Their reports of OLC processes were generally the same, many with negative experiences such as reduced timeliness, low morale, inaccurate documentation, unfulfilled promises, careless mistakes, and favoritism. They added that decisions were made by the OLC attorney regarding applicant compliance and renewal dates rather than consulting the boards.

The board administrators continued that the OLC staff would leave phone applicants on hold, makes multiple phone transfers, or they did not return phone calls to applicants. Board administrators received irate calls from applicants and had to try to trace the problems. In addition, they had to defend OLC's decisions concerning their boards, even though the board administrators had no authority or control over OLC. Having to track down applicants' questions that should have been answered in OLC required administrative time.

Efficiency of Licensing Process

In a document titled "OLC Transition Brief", dated January 3, 2011, OLC included a review of one board's licensure applications for an 18-month period. No description was given to define the method used for the sample selection. Also, we could not determine if the data pertained to initial or renewal applications. The results from a total of 628 applications indicated:

- 56% were issued after 30 days.
- 30% were issued within 14 days.
- 13% were issued between 15 and 30 days.
- 1% was closed or withdrawn.

To determine how efficiently the professional and occupational licensing (POL) division was processing license applications, we reviewed the number of days it took LLR to process applications for initial licenses before the creation of the Office of Licensure and Compliance (OLC) and after OLC had been operating for a period of time. We obtained data from LLR for initial license applications from January 1, 2008, through June 30, 2008, and January 1, 2010, through June 30, 2010, for a nonstatistical sample of five boards: Board of Accountancy, Auctioneers' Commission, Board of Funeral Service, Board of Nursing, and Board of Examiners in Psychology. We found that, for all the boards which had issued licenses, the average number of days to process applications decreased from 2008 to 2010, while the number of pending applications increased. Table 2.7 describes the number of applications and the average time to process them.

Table 2.7: Average Days to Process Initial Applications and Number of Pending Applications

Board	Year	Applications		Average Days to Process
		Number	Pending	
Board of Accountancy	2008	29	1	93
	2010	131	13	53
Auctioneers' Commission*	2008	-	-	-
	2010	38	6	48
Board of Funeral Service	2008	21	0	131
	2010	60	26	60
Board of Nursing	2008	36	5	99
	2010	2909	186	73
Board of Examiners in Psychology	2008	12	4	320
	2010	14	7	130

*The Auctioneers' Commission had only two applications from 1/1/08 – 6/30/08. Both of those applications were closed without licenses issued.

Source: LLR

We were unable to evaluate the efficiency of the POL division in processing renewal applications because LLR does not maintain the same data for renewals. We also attempted to determine the number of errors made in issuing licenses such as the wrong type of license issued, but that data is also not maintained.

We reviewed the general licensing process for initial license applications used by the OLC as well as the licensing procedures for four of the licensing boards. We found that the general licensing process was not very specific and referenced the individual boards' statutes and regulations for guidance on the issuing of licenses. The procedures for the individual boards included more specific processes, but all of the required documentation and review was consistent with the board's statutes and regulations. Licensing board members had expressed concern about LLR's authority to issue initial licenses. In June 2009, the S.C. Attorney General issued an opinion to the Board of Pharmacy and concluded that, while LLR was responsible for administrative tasks for the boards, the agency did not have the authority to issue licenses for the practice of pharmacy. With the restructuring of the POL division (see p. 26), the boards are responsible for issuing their own licenses.

We also evaluated whether the boards were verifying that licensees were earning their continuing education as required by state law. We reviewed the same five boards and found that two of the boards had documentation that they verified continuing education through random audits of licensees although one board administrator indicated it has stopped doing audits for now. One board administrator stated that it had conducted audits, but the board did not maintain documentation of the audits. Two of the boards have not done continuing education audits in several years but have initiated or plan to initiate the audit process. To ensure that licensees are earning their required continuing education, the boards should conduct regular audits of licensees' continuing education and document the audit process.

Recommendation

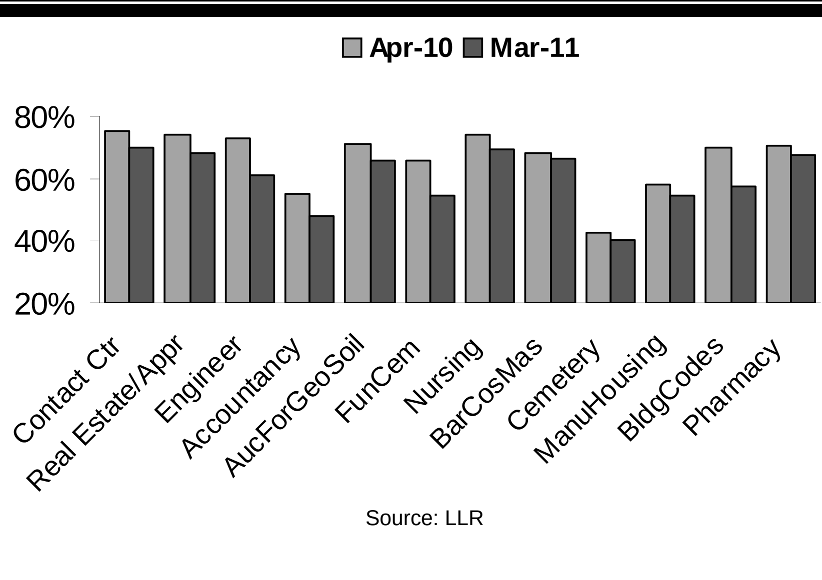
12. The professional and occupational licensing boards of the Department of Labor, Licensing and Regulation should regularly audit licensees' continuing education and document the audit process.

LLR Contact Center

We reviewed the data from the LLR contact center to determine how calls were handled. We found that, for the twelve-month period from April 2010 through March 2011, an average of 73% of the over 200,000 received calls were answered while the remaining calls were not answered. Contact center staff only spent an average of 36% of their time on calls or after call work associated with the calls when 70% is a reasonable expectation based on industry standards. We also reviewed the calls by board and found that, for all the boards, the percentage of calls answered decreased from April 2010 to March 2011. Chart 2.8 shows the percentage of calls answered by board in April 2010 and March 2011.

The contact center was eliminated as part of restructuring (see p. 26) so each board is now responsible for answering its own calls.

Chart 2.8: Percent Calls Answered by Board



Source: LLR

2011 Restructure

An LLR official reported that the newly-appointed agency director sought input from board members and POL management, and made a decision to eliminate the Office of Licensure and Compliance, effective April 1, 2011. According to a POL official, the licensing function has been moved back under the individual boards so that there is increased accountability and the ability to improve the process and track applications. Each board is autonomous to the degree required by its practice acts and regulations. Each administrator has more than one board, as was the case before OLC, but the administrative support functions for all the boards are uniform throughout the division. Additionally, the Director has set plans to group similar boards for better cross training. The Office of Investigations and Enforcement (OIE) continues to function as an office in the division of professional and occupational licensing, but investigators within OIE are assigned to individual boards and are cross-trained.

The LLR official added that printed communications recommended by the Office of Human Resources (OHR) and required by the reduction in force (RIF) plan were circulated. Additionally, numerous meetings, both internal and external, were held between the director and OHR, LLR's human resources office, all the board administrators (collectively and individually), the assistant deputy directors of the professional and occupational licensing division (Office of Licensure and Compliance, Office of Board Services, and Office of Investigations and Enforcement), and affected staff.

Investigations

We were asked to examine the effectiveness of LLR investigations. The Office of Investigations and Enforcement (OIE) is responsible for investigating complaints involving a possible violation of a professional or occupational practice act. It also investigates labor complaints for wage disputes and child labor. We found that OIE closed about 4,000 cases in both FY 08-09 and FY 09-10, but almost 60% of those cases were dismissed or had no action taken. We also found discrepancies in two sets of data compiled from LLR's database covering the same time period. LLR should ensure all employees follow the formal policy governing the investigative process that requires them to update the database after each step to ensure accuracy of information.

In addition, some board members voiced concerns over the investigation process. Primarily, the issues dealt with timeliness of investigations, the capability of investigators to adapt to board-specific rules and violations, and disciplinary recommendations by attorneys. We found OIE closed about the same number of cases it received during both FYs 08-09 and 09-10. Also, its staff's qualifications exceeded the requirements listed for their position descriptions.

Investigation Process

OIE has a formal policy governing the investigative process from start to finish. The investigative process includes steps such as entering data into the OIE database, sending letters to the complainant and the respondent, and scheduling meetings with IRC committees. Some boards may deviate from the typical process if they have a specific type of case that requires additional procedural steps. OIE's formal policy that structures administrative aspects of the investigative process includes the requirement of entering data into the internal database during each step.

LLR receives complaints directly from the public, through observation, or from a board member. Upon receiving a complaint, OIE administrative staff distribute the complaint to the appropriate chief investigator. The chief investigator determines if there is a possible violation of a professional or occupational practice act. If there is a possible violation, the case is assigned to an investigator, who completes the investigative process and submits an investigative summary report to the chief investigator. OIE internal guidelines stipulate data concerning the case to be updated and entered into the OIE database throughout the investigative process.

S.C. Code §40-1-70 grants boards the authority to sanction licensed individuals, conduct hearings, and resolve consumer complaints. Depending on the specific board, the chief investigator sends the investigative summary report, referencing the statute or regulation in violation, to an Investigative Review Committee (IRC). Some boards use an equivalent entity such as a Disciplinary Review Committee (DRC) or a hearing officer or panel. The chief investigator approves the IRC report for each board and schedules a meeting when sufficient case load develops. Board members also have the opportunity to request various other reports.

The IRC consists of the board administrator, Office of General Counsel representative, OIE representative, and an expert in the field, who is appointed by the board or board administrator. It makes recommendations of whether to pursue formal proceedings and resolutions of cases. Those individuals admitting to the allegations may not go to an IRC and may be handled with board agreed-upon resolution guidelines. Cases that are not resolved by the board or its agreed-upon resolution guidelines include initial complaints that do not reasonably allege any violation of the practice act and cases that do not fall under LLR's jurisdiction.

Staff Organization and Qualifications

OIE is comprised primarily of administrative and investigatory positions. As of December 2010, OIE was assigned 67 full-time and temporary positions, with ten positions serving administrative functions. The remaining positions were separated into three major investigatory sections: 23 individuals assigned to business and builder investigations, 26 assigned only to medical and health professions' investigations, and 5 that handled both wages/child labor complaints and medical and health cases. Finally, the last three positions were the OIE Director, Physician, and the head chief investigator of building/business and health/medical complaints.

Of the 55 employees directly involved in the investigatory process at that time, 46 held the position of "Investigator III." The remaining employees' positions each required a B.A. degree and some level of experience. The minimum requirements for the Investigator III position included the following:

- A high school diploma and three years experience conducting investigations or performing other law enforcement duties (a B.A. degree can be substituted for the experience).
- Considerable knowledge of investigative and inspection techniques, principles, and practices.
- Considerable knowledge of state and federal laws and regulations.
- Considerable knowledge of acceptable legal principles and practices.

Sixty-seven percent of investigators at OIE had over 15 years of experience in law enforcement and investigation work. The remaining investigators were divided between employees with 10 – 15 years of experience, almost 22%, and employees with less than 10 years of experience, just over 10%.

LLR documentation confirms that many investigators received extensive training in investigatory and evidence-gathering techniques. According to an LLR official, in order to get board-specific training, the chief investigator is responsible for ensuring new investigators are proficient with the practice act in their specific areas of investigation. After that, LLR considers the investigator capable to conduct efficient and quality investigations for the board. However, investigators that conduct building investigations also attend conferences and other types of events specific to building code enforcement.

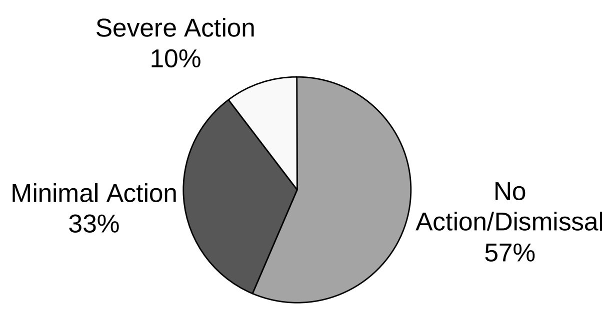
Received and Closed Investigations

LLR received around 4,500 complaints during both FY 08-09 and 09-10. It also closed about 4,000 cases during each of these fiscal years. However, about 1,000 of the complaints received each year did not allege any violation of the relevant practice act and therefore were not investigated. Labor complaints for wage disputes and child labor account for 21% of the complaints investigated. Of the complaints involving possible violations of a professional or occupational practice act, 86% of the cases received and closed during FYs 08-09 and 09-10 were for ten boards:

(1) Residential Builders Commission
(2) Real Estate Commission
(3) Board of Nursing
(4) Board of Medical Examiners
(5) Contractors' Licensing Board
(6) Board of Cosmetology
(7) Board of Pharmacy
(8) Board of Dentistry
(9) Real Estate Appraisers Board
(10) Manufactured Housing Board

Of the cases closed during both FYs 08-09 and 09-10, approximately 60% resulted in no action or dismissals of the case and about 30% resulted in minimal actions such as citations, fines, and reprimands. About 10% of the cases resulted in severe actions such as license revocations, suspensions, and cease and desist orders.

Graph 2.9: Type of Action Result for Closed Cases During FYs 08-09 and 09-10



Source: LLR

According to the formal policy governing the investigative process, OIE employees enter case data into the OIE database after each step in order to ensure accuracy of information. However, LLR provided us two sets of data covering the same time period with conflicting total cases closed for FY 08-09 and FY 09-10. An LLR official stated that, due to human error, some cases' statuses are not updated in the database, causing the discrepancy in the data sets. LLR should ensure that all employees follow the formal policy regarding entering case data during the course of the investigative process to prevent major discrepancies due to human error and enable OIE and the boards to track more accurately the process of cases.

Recommendation

13. The Department of Labor, Licensing and Regulation should ensure all employees follow the formal policy governing the investigative process that requires them to update the database after each step to ensure accuracy of information.

Professional and Occupational Licensing Boards

Board of Accountancy
Board of Architectural Examiners
Athletic Commission
Auctioneers' Commission
Board of Barber Examiners
Building Codes Council
Board of Chiropractic Examiners
Perpetual Care Cemetery Board
Contractors' Licensing Board
Board of Cosmetology
Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists and Psycho-Educational Specialists
Board of Dentistry
Panel for Dietetics
Board of Registration for Professional Engineers and Surveyors
Environmental Certification Board
Board of Registration for Foresters
Board of Funeral Service
Board of Registration for Geologists
Board of Landscape Architectural Examiners
Board of Long Term Health Care Administrators
Manufactured Housing Board
Massage/Bodywork Therapy
Board of Medical Examiners
Board of Nursing
Board of Occupational Therapy
Board of Examiners in Opticianry
Board of Examiners in Optometry
Board of Pharmacy
Board of Physical Therapy Examiners
South Carolina Commissioners of Pilotage
Board of Podiatry Examiners
Board of Examiners in Psychology
Board of Pyrotechnic Safety
Real Estate Commission
Real Estate Appraisers Board
Residential Builders Commission
Board of Social Work Examiners
Soil Classifier Advisory Council
Board of Speech-Language Pathology and Audiology
Board of Veterinary Medical Examiners

Agency Comments

Comments from the Department of Labor, Licensing and Regulation follow.

The Budget and Control Board reviewed pp. 5-10 of the report and elected not to submit comments for publication.

Appendix B
Agency Comments

South Carolina
Department of Labor, Licensing and Regulation

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July 18, 2011

Thomas J. Bardin, Jr., Director
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Re: Final Report: *A Review of the Professional and Occupational Licensing Division at LLR*

Dear Mr. Bardin:

Thank you for your diligent attention to LLR and for allowing me to comment on the final draft of the report, *A Review of the Professional and Occupational Licensing Division at LLR.* Since my confirmation on January 13, 2011, the Professional and Occupational Licensing (POL) division has been reorganized addressing the issues the Agency has had in the recent past. The licensing function is now the responsibility of the professional and occupational licensing boards. This change has already created accountability and efficiency in the POL division. I have also commenced legal proceeding regarding the computer system contract and ceased use of the Accela contractors.

We appreciate your recognition of the depth and experience of our investigators in the POL division and your acknowledgement that the division is in compliance with State law.

Again, thank you for the opportunity to respond.

Sincerely,

Catherine Templeton

Catherine B. Templeton

This report was published for a
total cost of $33;
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